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10 **BEFORE THE**
RESPIRATORY CARE BOARD
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Statement of Issues Against:

Case No. S-368

13 RAMONCITO M. FABRA
14 2750 Casey Street
San Diego, CA 92139

STATEMENT OF ISSUES

15
16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in her
20 official capacity as the Executive Officer of the Respiratory Care Board of California, Department
21 of Consumer Affairs.

22 2. On or about January 17, 2006, the Respiratory Care Board of California,
23 Department of Consumer Affairs received an application for Respiratory Care Practitioner License
24 from RAMONCITO M. FABRA (Respondent). On or about December 12, 2005, Ramoncito M.
25 Fabra certified under penalty of perjury to the truthfulness of all statements, answers, and
26 representations in the application. The Board denied the application on June 16, 2006. On or about
27 July 17, 2006, the Board received Respondent's request for a hearing contesting the denial of his
28 application for licensure.

JURISDICTION

3. This Statement of Issues is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 3710 of the Code states:

“The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

5. Section 3718 of the Code states:

“The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter.”

6. Section 3732 of the Code states:

“... ”

“(b) The board may deny an application, or may order the issuance of a license with terms and conditions, for any of the causes specified in this chapter for suspension or revocation of a license, including, but not limited to, those causes specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761.”

7. Section 3750 of the Code states:

“The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

“... ”

“(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

“... ”

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1 “(g) Conviction of a violation of any of the provisions of this chapter or of
2 any provision of Division 2 (commencing with Section 500), or violating, or
3 attempting to violate, directly or indirectly, or assisting in or abetting the violation
4 of, or conspiring to violate any provision or term of this chapter or of any provision
5 of Division 2 (commencing with Section 500).

6 “. . .

7 8. Section 3752.6 of the Code states:

8 “For purposes of Division 1.5 (commencing with Section 475), and this
9 chapter [the Respiratory Care Practice Act], a crime involving sexual misconduct or
10 attempted sexual misconduct, whether or not with a patient, shall be considered a
11 crime substantially related to the qualifications, functions, or duties of a respiratory
12 care practitioner.”

13 9. Section 480 states, in pertinent part:

14 "(a) A board may deny a license regulated by this code on the grounds that the
15 applicant has one of the following:

16 ". . .

17 "(3) Done any act which if done by a licentiate of the business or profession
18 in question, would be grounds for suspension or revocation of license.

19 "The board may deny a license pursuant to this subdivision only if the crime
20 or act is substantially related to the qualifications, functions or duties of the business
21 or profession for which application is made.

22 ". . ."

23 10. California Code of Regulations (“CCR”), title 16, section 1399.370, states:

24 “For the purposes of denial, suspension, or revocation of a license, a crime
25 or act shall be considered to be substantially related to the qualifications, functions
26 or duties of a respiratory care practitioner, if it evidences present or potential
27 unfitness of a licensee to perform the functions authorized by his or her license or in
28 a manner inconsistent with the public health, safety, or welfare. Such crimes or acts

1 shall include but not be limited to those involving the following:

2 “(a) Violating or attempting to violate, directly or indirectly, or assisting or
3 abetting the violation of or conspiring to violate any provision or term of the Act.

4 “. . .

5 “(e) Conviction of a crime involving lewd conduct, prostitution or solicitation
6 thereof, or pandering and/or indecent exposure, as defined by the Penal Code.”

7 **COST RECOVERY**

8 11. Section 3753.5, subdivision (a) of the Code states, in pertinent part:

9 "In any order issued in resolution of a disciplinary proceeding before the
10 board, the board or the administrative law judge may direct any practitioner or
11 applicant found to have committed a violation or violations of law to pay to the board
12 a sum not to exceed the costs of the investigation and prosecution of the case."

13 12. Section 3753.7 of the Code states:

14 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall
15 include attorney general or other prosecuting attorney fees, expert witness fees, and
16 other administrative, filing, and service fees."

17 13. Section 3753.1 of the Code states, in pertinent part:

18 "(a) An administrative disciplinary decision imposing terms of probation may
19 include, among other things, a requirement that the licensee-probationer pay the
20 monetary costs associated with monitoring the probation. . . ."

21 **FIRST CAUSE FOR DENIAL OF APPLICATION**

22 **(Conviction of a Crime)**

23 14. Respondent's application is subject to denial under sections 3732(b) and 3750,
24 as defined by sections 3750(d) and 3750(g) of the Code, in that he was convicted of a crime
25 substantially related to the qualifications, functions or duties of a respiratory care practitioner. The
26 circumstances are as follows:

27 ////

28 ////

1 A. On or about October 20, 2001, while a Corpsman in the U.S.
2 Navy, Respondent was treating a spider bite wound located on a recruit's inner thigh.
3 During the course of this treatment, Respondent squeezed the recruit's penis. The
4 recruit told Respondent not to touch him like that again. Shortly thereafter,
5 Respondent touched the recruit's penis at least two more times. Respondent initially
6 denied the incident but then admitted to the offense shortly before a polygraph
7 examination. Specifically, Respondent admitted that when treating the recruit he
8 touched the recruit's penis three different times. Respondent stated that he engaged
9 in such conduct because he wanted to be discharged from the Navy.

10 B. A Complaint was filed in Naval Legal Service Office North
11 Central Department, Great Lakes, Illinois, charging Respondent with violating UCMJ
12 Article 134 [commit indecent assault upon a navy recruit, a person not his spouse, by
13 wrongfully touching and grasping the penis of the recruit, with intent to gratify the
14 lust and sexual desires of Respondent].

15 C. On or about January 9, 2002, in the case entitled *United States*
16 *v. Ramoncito M. Fabra, Hospitalman (E-2)*, U.S. Navy, FOIA Case No. 0JAG
17 20/F06081 (NMCM 200201696), before Naval Legal Service Office, North Central
18 Detachment, Great Lakes, Illinois, Respondent was convicted on his own guilty plea
19 of a lesser-included offense under UCMJ Article 128 [assault consummated by a
20 battery with one Specification thereunder]. As a result of the conviction, Respondent
21 was discharged from the naval service with a Bad Conduct Discharge, confined for
22 a period of 30 days; and reduced to the pay grade of E-1.

23 **SECOND CAUSE FOR DENIAL OF APPLICATION**

24 **(Crime Involving Sexual Misconduct)**

25 15. Respondent's application is further subject to denial under sections 3732(b)
26 and 3750, as defined by section 3752.6 of the Code, in that he committed a crime involving sexual
27 misconduct, as more particularly described in paragraph 15, above, which is incorporated by
28 reference as if fully set forth herein.

1 16. Respondent has admitted to the act of sexual misconduct through a written
2 statement dated October 31, 2001, and through correspondence from Respondent to the Respiratory
3 Care Board received on or about April 6, 2006.

4 **THIRD CAUSE FOR DENIAL OF APPLICATION**

5 **(Performance of An Act If Done By Licentiate Would Be Grounds for Revocation)**

6 17. Respondent's application is further subject to denial under Code section
7 480(a)(3), in that he committed an act which if performed by a licensee would be grounds for
8 revocation, as more particularly described in paragraphs 15 through 16, above, which are
9 incorporated by reference as if fully set forth herein.

10 **PRAYER**

11 WHEREFORE, Complainant requests that a hearing be held on the matters herein
12 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

13 1. Denying the application of RAMONCITO M. FABRA for a respiratory care
14 practitioner license;

15 2. Directing RAMONCITO M. FABRA to pay the Respiratory Care Board of
16 California the costs of the investigation and enforcement of this case, and if placed on probation, the
17 costs of probation monitoring;

18 3. Taking such other and further action as deemed necessary and proper.

19 DATED: October 24, 2006

20
21 Original signed by Liane Zimmerman for:
22 STEPHANIE NUNEZ
23 Executive Officer
24 Respiratory Care Board of California
25 Department of Consumer Affairs
26 State of California
27 Complainant
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